



**Billing Code: 3410-30-P**

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 271, 274 and 278**

**RIN 0584-AE40**

**Supplemental Nutrition Assistance Program: Implementation of the Agricultural Act of 2014 Purchasing and Delivery Services for the Elderly and Disabled**

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise program regulations to implement changes made by the Agricultural Act of 2014 (the “2014 Farm Bill”), which amends the definition of “retail food store” in the Food and Nutrition Act of 2008 (the FNA) to include governmental or private nonprofit food purchasing and delivery services (P&D Services) that purchase and deliver food to households in which the head of household is an individual who is unable to shop for food, and who is 60 years of age or older, or physically or mentally handicapped or otherwise disabled. Expansion of the definition of “retail food store” to allow P&D Services to become authorized Supplemental Nutrition Assistance Program (SNAP) retailers is expected to increase accessibility to the program for homebound elderly and disabled persons.

**DATES:** Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured of consideration.

**ADDRESSES:** FNS invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Send comments to Vicky T. Robinson, Branch Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Rm. 418, 3101 Park Center Drive, Alexandria, Virginia 22302.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Vicky T. Robinson, Branch Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, Rm. 418, 3101 Park Center Drive, Alexandria, Virginia 22302, 703-305-2476.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This rule proposes to implement a provision of the Agricultural Act of 2014 (Pub. L. 113-79; the “2014 Farm Bill”), which amends the definition of “retail food

store” in Section 3(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2011 note; the “FNA”) to include P&D Services that purchase and deliver food to households in which the head of household is an individual who is unable to shop for food, and who is 60 years of age or older, or physically or mentally handicapped, or otherwise disabled. Today, retail food stores are authorized to accept SNAP benefits in exchange for eligible foods, as defined in program regulations at 7 CFR part 271, at § 271.2. As a result of the 2014 Farm Bill, approved P&D Services will also be permitted to accept SNAP benefits for the SNAP eligible foods that they purchase and deliver to qualifying households.

Currently, a number of different types of firms may be authorized to accept SNAP benefits as retail food stores, including, but not limited to, public or private communal dining facilities, meal delivery services, private nonprofit cooperative food purchasing ventures and farmers’ markets. All firms apply for authorization through FNS which may, or may not, authorize the firm as a SNAP retailer based upon the information provided in the application and a determination of whether the firm meets Program requirements and whether the firm’s participation will further the purposes of the program. Accordingly, this rule proposes to amend and revise 7 CFR part 278 to include P&D Services as another type of firm which may be eligible for authorization as a retail food store, and to clarify and incorporate criteria for participation of P&D Services as SNAP retailers.

Although FNS is proposing this rule to amend and revise regulations in accordance with the 2014 Farm Bill, the Farm Bill also permits the Secretary to authorize up to 20 P&D Services as retail food stores prior to issuance of rules. FNS plans to authorize these stores in the upcoming year for a one year trial period and will

incorporate any lessons learned into additional guidance for P&D Services' participation. Proposed amendments and revisions to program regulations are discussed more fully in the next section of the preamble.

## **II. Discussion of the Rule's Provisions**

### **7 CFR Part 271**

FNS is proposing three minor amendments or revisions to 7 CFR part 271 to clarify the definition of "retail food store" and to distinguish and define P&D Services as retail food stores. All three changes are proposed for the definitions section located at § 271.2.

§ 271.2.

First, FNS proposes to add to § 271.2 a definition for "food purchasing and delivery services" which says that the term means governmental or private nonprofit food purchasing and delivery services that purchase eligible foods for, and delivers these foods to, households in which the head of household is an elderly or disabled member who is unable to shop for food. Second, FNS proposes to revise the definition of "house-to-house trade route" to clarify that it includes any retail food business operated by selling eligible foods in inventory from a truck bus, pushcart or other mobile vehicle. FNS proposes to add "by selling eligible foods in inventory" to this definition to distinguish P&D Services, which may also operate from a mobile vehicle, but which will not maintain an inventory of foods. Rather, P&D Services typically purchase eligible foods from another retailer and deliver these foods to SNAP households. Finally, FNS

proposes to amend the definition of “retail food store” by adding paragraph (6) under the term, to incorporate P&D services as part of the definition of “retail food store.”

#### 7 CFR Part 274

FNS proposes a few amendments to § 274.7, to clarify which households may use SNAP benefits to purchase eligible foods through P&D Services and to clarify transaction limits for P&D services. Specifically, FNS proposes to amend paragraph (c) of this section regarding transaction limits. Currently, program regulations provide that no minimum dollar amount per transaction may be established. However, given that P&D services are providing a delivery service, it may not be economical or efficient for such services to make deliveries of small dollar values of eligible foods. Therefore, FNS proposes to amend this paragraph by allowing P&D Services to establish a minimum dollar amount per transaction. In proposed § 278.2(m)(4), FNS specifies that P&D Services may require an order minimum of not more than \$50.

In § 274.7, FNS inserts a new paragraph (i), which proposes to allow households in which the head of household is an elderly or disabled member who is unable to shop for food to use SNAP benefits to purchase eligible foods through a food purchasing and delivery service authorized in accordance with § 278.1(j). FNS then moves current paragraph (i) to paragraph (j) and amends it. Currently, this paragraph says that State agencies must implement a method to ensure that access to prepared meals and hunting and fishing equipment is limited to eligible households. FNS proposes to amend this paragraph by adding the same implementation requirement of State agencies for households eligible for P&D Services.

#### 7 CFR Part 278

In this rule, FNS proposes to revise and amend 7 CFR part 278 to incorporate criteria for the authorization and participation of P&D Services throughout. Following is a discussion of the major changes to this part proposed in this rule. Additional minor conforming changes are also being made to § 278.6, imposing the same penalty requirements of P&D Services as are required of other firms.

As for major changes, FNS proposes to amend § 278.1, which provides the process and criteria for authorization of various firms as retail food stores, by inserting paragraph (j), which adds P&D Services as a type of firm that may be authorized as a retail food store. FNS also proposes the requirements that P&D Services must meet in order to be authorized in this paragraph and clarifies that P&D Services may purchase and deliver to households foods or non-food items not eligible for purchase with SNAP benefits, as long as these purchases are not paid for using SNAP benefits.

FNS then proposes to amend paragraph (k) of § 278.1, as redesignated, which provides 5 years as the period of authorization for retail food stores. Because P&D Services do not maintain an inventory of eligible foods and must have third party sources of eligible foods, and because they work with particularly vulnerable SNAP households in their own homes, FNS finds it is prudent to require a shorter authorization period of 2 years. The shorter authorization period would allow FNS to have greater oversight of P&D Services, thereby ensuring stronger program integrity.

FNS also proposes to amend § 278.2(b) regarding equal treatment for SNAP customers. Specifically, one provision of this paragraph provides that FNS is not authorized to specify prices at which retail food stores may sell food. While this remains true, the 2014 Farm Bill specifies that food purchasing and delivery services must

provide eligible foods to the participating household at the price paid by the service for the food, without any cost markup, as a condition of being authorized. Accordingly, FNS proposes to include this language in this paragraph (b). To note, this paragraph also prohibits retail food stores from charging tax on eligible foods. Likewise, P&D Services authorized as retail food stores would not be permitted to charge households tax on eligible foods.

Finally, FNS proposes to add a new paragraph (m) to § 278.2, which details the requirements of participation for retail food stores, by adding paragraphs (m)(1) through (7) which contain requirements specific to P&D Services. Paragraphs (m)(1) through (3) contain proposed requirements specifically articulated in the 2014 Farm Bill, while paragraphs (4) through (7) contain proposed requirements either necessary to ensure the legitimate use of SNAP benefits or to help ensure that the participation of P&D Services will further the purposes of the program.

In paragraph (m)(1), FNS proposes to require that P&D Services notify the participating household, at the time the household places a food order, of any delivery fee that will be charged for the purchase and delivery of foods. FNS also proposes that, at the same time, P&D Services notify the household that a delivery fee cannot be paid with SNAP benefits. This ensures that the household can consider the cost of the delivery fee when making decisions regarding the use of the service and the purchase of foods, and that the household is aware that it must use another form of payment besides SNAP benefits for delivery fees. A clear understanding of the delivery fee and its payment method is important for both the household and the P&D Service to have a successful transaction.

In paragraph (m)(2), FNS would require P&D Services to provide its food purchasing and delivery services at low or no cost, as required by the 2014 Farm Bill. Although the Farm Bill does not specify any limit on the amount of the delivery fee, FNS believes that, given the vulnerable population being served, it is important to propose a required limitation on the amount of the delivery fee to ensure that the cost of the delivery service is not excessive. Accordingly, FNS proposes that the delivery fee charged cannot exceed 25 percent of the order total, up to a maximum of \$20 per delivery for all items purchased for delivery, including items not eligible for payment with SNAP benefits and which are paid for using another form of payment. However, FNS would encourage P&D Services to base any delivery fee, within these parameters, on a sliding scale taking into account factors such as the household's income.

In paragraph (m)(3), FNS proposes to require P&D Services to sell eligible foods purchased for the household at the price paid by the service for the food without any additional cost markup. Again, this requirement is specified in the 2014 Farm Bill. P&D Services should also be aware that 278.2(b) prohibits retail food stores from charging tax on eligible foods purchased with SNAP benefits. Therefore, P&D Services would not be permitted to charge any tax paid for these foods to the households they serve.

In paragraph (m)(4), FNS proposes to allow P&D Services, at their option, to impose a total order minimum of up to \$50 per delivery for all items purchased for delivery, including items not eligible for payment with SNAP benefits and which are paid for using another form of payment. This provision recognizes that it may be difficult for P&D Services to provide their services for very small order amounts. However, a larger



limit may make the service inaccessible to many eligible SNAP participants. The Agency would be very interested in receiving comments on this proposed provision.

In paragraph (m)(5), FNS proposes to require P&D Services to be able to accept orders for eligible foods, and deliver these foods, at least monthly. This allows the homebound elderly and disabled persons served by P&D Services to have access to eligible foods with some regularity, and it allows them the opportunity to plan their collective food purchases during any given month.

In paragraph (m)(6), FNS proposes to require P&D Services to obtain the agreement of the household, at the time of the food order, of the date and timeframe of delivery. This proposed requirement, that both the P&D Service and the household agree to a specific date and timeframe of delivery, is intended to benefit both the service and the household. It is important that the household provides input and agreement as to the time that the delivery will take place. At the same time, it helps to ensure for the P&D Service that someone will be available to accept the delivery. While the proposed rule would not dictate the maximum window of delivery allowed, it is recommended that any delivery timeframe does not exceed two hours.

In paragraph (m)(7), FNS proposes that P&D Services may not impose any conditions on the use of the food purchase and delivery service which place a hardship on the SNAP household, or which are unrelated to the purchase and delivery of foods. Such additional conditions would include a requirement to tip the delivery driver or to participate in religious or affiliate activities. The eligible SNAP participants served by P&D Services are particularly vulnerable and will be accepting deliveries in their own homes. Conditions placed on delivery of eligible foods to these households may be

perceived as being coercive, even if not intended as such. Therefore, FNS believes it is important that any conditions imposed on food purchase and delivery services be limited to those strictly necessary, and related to the purchase and delivery of foods.

Although FNS is proposing specific criteria related to the authorization and participation of P&D Services in SNAP, these retailers will be expected to meet all other existing program requirements for retailers, as appropriate. For example, in accordance with current 278.2(e), P&D Services may not redeem SNAP benefits before delivery of foods.

### **III. Procedural Matters**

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. FNS considers that the benefits of this regulation justify its costs. Although governmental or private nonprofit food purchasing and delivery services may incur additional operational costs should the proposals in this rule become final, most SNAP retailers also incur such costs. These costs are outweighed by the benefit of the greater program flexibility of allowing food purchasing and delivery services to serve the homebound elderly and disabled.

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### **Regulatory Impact Analysis**

This proposed rule has been designated as not significant by OMB. Therefore, no Regulatory Impact Analysis is required.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this proposed rule would not have a significant impact on a substantial number of small entities. Although the rulemaking proposes to allow additional small not-for-profit organizations to accept SNAP benefits, it is not anticipated that a substantial number of small entities will begin accepting SNAP benefits as a result of the rulemaking, nor will the impact on these small entities be significant given that some of these entities already use another process to accept SNAP benefits and because SNAP benefits are just one of the forms of payment accepted by these entities.

### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a

cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Executive Order 12372**

SNAP is listed in the Catalog of Federal Domestic Assistance Programs under 10.551.

For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### **Federalism Summary Impact Statement**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121.

The Department has considered the impact of this proposed rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

### **Executive Order 12988, Civil Justice Reform**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This proposed rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

### **Civil Rights Impact Analysis**

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of religion, age, race, color, national origin, sex, political beliefs or disability. After a careful review of the rule’s intent and provisions, FNS has determined that this proposed rule is not expected to negatively affect the participation of protected individuals in the Supplemental Nutrition Assistance Program.

### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

On February 18, 2015, as part of its regular quarterly Tribal consultation schedule, USDA engaged in a consultative session to obtain input by Tribal officials, or their designees, and Tribal members concerning the effect of this and other rules on the Tribes or Indian Tribal governments. No concerns regarding the provisions of this proposed rule were expressed.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1994.

### **E-Government Act Compliance**

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased

opportunities for citizen access to Government information and services, and for other purposes.

## **List of Subjects**

### **7 CFR Part 271**

Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

### **7 CFR Part 274**

Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

### **7 CFR Part 278**

Banks, banking, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 7 CFR parts 271, 274, and 278 are proposed to be amended as follows:

## **PART 271 – GENERAL INFORMATION AND DEFINITIONS**

1. The authority citation for part 271 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

2. Amend § 271.2 as follows:

- a. Add the definition, in alphabetical order, for "Food purchasing and delivery services"; and
- b. Revise the definitions of "House-to-house trade route" and "Retail food store."

The addition and revisions read as follows:

**§ 271.2 Definitions.**

\* \* \* \* \*

*Food purchasing and delivery services* means governmental or private nonprofit food purchasing and delivery services that purchase eligible foods for, and delivers these foods to, households in which the head of household is an elderly or disabled member who is unable to shop for food.

\* \* \* \* \*

*House-to-house trade route* means any retail food business operated by selling eligible foods in inventory from a truck, a bus, a pushcart, or other mobile vehicle.

\* \* \* \* \*

*Retail food store* means:

(1) An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale, on a continuous basis, a variety of foods in sufficient quantities in each of the four categories of staple foods including perishable foods in at least two such categories (Criterion A) as set forth in § 278.1(b)(1) of this chapter, or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) as set forth in § 278.1(b)(1) of this chapter as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of stockkeeping units, or



other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry as set forth in § 278.1(b)(1) of this chapter. Entities that have more than 50 percent of their total gross retail sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption either for carry-out or on-premises consumption, and require no additional preparation, are not eligible for SNAP participation as retail food stores under § 278.1(b)(1) of this chapter.

(2) Public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics; public or private nonprofit group living arrangements; public or private nonprofit shelters for battered women and children; public or private nonprofit establishments, approved by an appropriate State or local agency, that feed homeless persons; or a restaurant that contracts with an appropriate State agency to provide meals at concessional (low or reduced) prices to homeless SNAP households;

(3) Any stores selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible foods;

(4) Any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food;

(5) A farmers' market; and

(6) A governmental or private nonprofit food purchasing and delivery service that purchases eligible foods for, and delivers these foods to, households in which the head of household is an elderly or disabled member who is unable to shop for food.

\* \* \* \* \*

## **PART 274 – ISSUANCE AND USE OF PROGRAM BENEFITS**

3. The authority citation for part 274 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

4. In § 274.7:

a. Revise paragraph (c); and

b. Redesignate paragraph (i) as paragraph (j) and revise it, and add a new paragraph (i).

The revisions and addition read as follows:

### **§ 274.7 Benefit redemption by eligible households.**

\* \* \* \* \*

(c) *Transaction limits.* No minimum dollar amount per transaction or maximum limit on the number of transactions shall be established, except that food purchasing and delivery services authorized under § 278.1(j) may establish a minimum dollar amount per transaction in accordance with § 278.2(m)(4). In addition, no transaction fees shall be imposed on SNAP households utilizing the EBT system to access their benefits.

\* \* \* \* \*

(i) Eligible households in which the head of household is an elderly or disabled member who is unable to shop for food may use Program benefits to purchase eligible foods through a food purchasing and delivery service authorized in accordance with § 278.1.(j) of this chapter.

(j) State agencies shall implement a method to ensure that access to prepared meals, hunting and fishing equipment, or delivered foods is limited to eligible households as described in paragraphs (g) through (i) of this section.

## **PART 278 – PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS**

5. The authority citation for part 278 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

6. In § 278.1:

- a. Redesignate paragraphs (j) through (t) as paragraphs (k) through (u), respectively, and add new paragraph (j);
- b. Revise newly redesignated paragraph (k);
- c. Amend newly redesignated paragraph (l)(1) by removing the words, “or (i)” and adding in their place the words, “,(i) or (j)”;
- d. Amend newly redesignated paragraph (m)(1)(ii) by removing the words, “or (i)” and adding in their place the words, “(i) or (j)”;
- e. Amend newly redesignated paragraph (m)(1)(iii) by removing the words, “paragraph (k)(2)” and adding in their place the words, “paragraph (l)(2)”;
- f. Amend newly redesignated paragraph (m)(1)(iv) by removing the words, “paragraph (k)(3)” and adding in their place the words, “paragraph (l)(3)”;
- g. Amend newly redesignated paragraph (p) by removing the words, “paragraph (k)” and adding in their place the words, “paragraph (l)”;

- h. Amend newly redesignated paragraph (r) by removing the words, “paragraph (q)(2)” and “paragraph (q)(3)” and adding in their places the words, “paragraph (r)(2)” and “paragraph (r)(3)”, respectively;
- i. Amend newly redesignated paragraph (r)(1)(i) by removing the words, “paragraph (q)(1)(ii)” and adding in their place the words, “paragraph (r)(1)(ii)”;
- j. Amend newly redesignated paragraph (r)(1)(ii) by removing the words, “paragraph (q)(1)(i)” and adding in their place the words, “paragraph (r)(1)(i)”;
- k. Amend newly redesignated paragraph (r)(1)(v) by removing the words, “paragraph (q)(1)(iv)” and adding in their place the words, “paragraph (r)(1)(iv)”;
- l. Amend newly redesignated paragraph (r)(2)(iv) by removing the words, “paragraph (q)(2)(ii)” and adding in their place the words, “paragraph (r)(2)(ii)”, and by removing the words, “paragraph (q)(2)(iv) and adding in their place the words, “paragraph (r)(2)(iv)”;
- m. Remove the Effective Date Note.

The revisions and additions read as follows:

**§ 278.1 Approval of retail food stores and wholesale food concerns.**

\* \* \* \* \*

(j) *Food purchasing and delivery services for households with an elderly or disabled member.* FNS shall authorize as retail food stores governmental or private nonprofit food purchasing and delivery services that purchase eligible food for, and deliver the food to, households in which the head of household, as defined in § 273.1(d) of this chapter, is an elderly or disabled member, as defined in § 271.2 of this chapter, who is unable to shop for food. Such services must meet the requirements of paragraphs (a) and (b) of this

section. Purchasing and delivery services may purchase and deliver foods or non-food items not eligible for purchase with SNAP benefits, as long as these items are not paid for with SNAP benefits. Private nonprofit food purchasing and delivery services eligible for authorization include only those which meet the requirements of paragraph (d)(1) of this section.

(k) *Authorization.* Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be valid only for the time period for which the firm is authorized to accept and redeem SNAP benefits. The authorization card shall be retained by the firm until such time as the authorization period has ended, authorization in the program is superseded, or the card is surrendered or revoked as provided in this part. All firms, except those authorized under paragraph (j) of this section, will be authorized in the program for a period of 5 years. Firms authorized under paragraph (j) of this section will be authorized for a maximum period of 2 years. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.

\* \* \* \* \*

7. In § 278.2 revise the second and third sentences of paragraph (b) and add paragraph (m) to read as follows:

**§ 278.2 Participation of retail food stores.**

\* \* \* \* \*

(b) \* \* \* Although nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food, food purchasing and delivery services

must provide eligible foods to the participating household at the price paid by the service for the food, without any cost markup. Further, public or private nonprofit homeless meal providers may only request *voluntary* use of SNAP benefits from homeless SNAP recipients and may not request such households using SNAP benefits to pay more than the average cost of the food *purchased* by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service. \* \* \*

\* \* \* \* \*

(m) Food purchasing and delivery services authorized under § 278.1(j) must:

- (1) Notify the participating household, at the time the household places a food order, the amount of any delivery fee that will be charged for the purchase and delivery of foods, and that the delivery fee cannot be paid for with SNAP benefits;
- (2) Ensure that the food purchasing and delivery service is provided at low or no cost, and that any delivery fee charged will not exceed 25 percent of the order total, up to a maximum of \$20 per delivery for all items purchased, including eligible foods purchased with SNAP benefits and items purchased with other tender, combined;
- (3) Sell eligible foods purchased for the household at the price paid by the service for the food without any additional cost markup;
- (4) Not impose a total order minimum of more than \$50 per delivery for all items purchased, including eligible foods purchased with SNAP benefits and items purchased with other tender, combined;
- (5) Offer to accept orders and be able to deliver foods at least monthly;
- (6) Obtain the agreement of the participant, at the time of the food order, of the date and timeframe of delivery; and

(7) Not impose any conditions on the use of the food purchase and delivery service which place a hardship on the SNAP household or which are unrelated to the purchase and delivery of foods, such as tipping of the delivery driver or participation in religious or other affiliate activities.

**§ 278.6 [Amended]**

8. In § 278.6:

- a. Amend paragraph (e)(1)(iii)(A) by removing the words, “and (h)” and adding in their place the words, “,(h) and (i)”.
- b. Amend paragraph (l) by removing the references, “§ 278.1(k)” and “§ 278.1(j)” and adding in their place the references, “§ 278.1(l)” and “§ 278.1(k)”, wherever they occur, respectively.
- c. Amend paragraph (m) by removing the references, “§ 278.1(k)” and “§ 278.1(j)” and adding in their place the references, “§ 278.1(l)” and “§ 278.1(k)”, respectively.

Dated: June 21, 2015.

Jeffrey J. Tribiano  
Acting Administrator  
Food and Nutrition Service

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